IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 1409 of 1996()

WCC.186/1994 of WORKMEN'S COMPENSATION COMMISSIONER (DEPUTY LABOUR COMMISSIONER), KANNUR

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APPELLANT/2ND OPPOSITE PARTY:

THE NEW INDIA ASSURANCE CO/ LTD\. KALPETTA NOW
REP. BY ITS DEPUTY MANAGER, REGIONAL OFFICE,
M.G.ROAD, KOCHI 11.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENT/APPLICANT:

A.SAIDU, S/O.MOHAMMED, ALLOOR HOUSE, CHULIKKA,
MEPPADI P.O., KOTTAPPADI, WAYANAD.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.1409 of 1996

Dated, this the 11th day of October, 2007

JUDGMENT

The insurer who was the second opposite party in W.C.C.No.186/1994 on the file of the Commissioner for Workmen's Compensation(Deputy Labour Commissioner), Kannur is the appellant. Respondent filed a petition under Section 22 of the Workmen's Compensation Act, 1923 claiming compensation alleging that on 28.9.1994 while he was working as driver of an autorickshaw owned by one Sainudheen who was the first opposite party in W.C.C., sustained employment injuries. Employer/first opposite party filed a written statement admitting the employer-employee relationship and also wages claimed by the respondent. But he denied the contention of the respondent that he sustained employment injury. Appellant admitted existence of coverage of a valid policy of insurance; but disputed employer-employee relationship and quantum of compensation. Deputy Labour Commissioner found that the respondent was an employee of the Sainudheen/first opposite party and he sustained employment injuries. Though no disability certificate was produced the Deputy Labour Commissioner fixed disability at 20% and awarded Rs.38,160/- as compensation. Challenging that award this appeal is filed.

2. Learned counsel appearing for the appellant has raised two

contentions. It was contended that respondent had sustained only minor injuries and he did not sustain any disability at all and he did not produce any disability certificate or offered himself for examination by a Medical Board. It was argued that in the absence of medical evidence regarding percentage of disability the Deputy Labour Commissioner should not have arbitrarily fixed the disability and awarded compensation. The second point raised is that though the accident occurred prior to the amendment of the Workmen's Compensation Act the figures accepted are in accordance with the amended Act which is illegal and the compensation ought to have been worked out in accordance with the provisions of the repealed Act.

3. In **New India Assurance Co. Ltd. v. Sreedharan (1995(1) KLT 275)** a Full Bench of this Court has held that Workmen's Compensation Court cannot arbitrarily fix the disability and it is to be fixed by a Doctor. In this case there is total absence of medical evidence. So the Deputy Labour Commissioner ought to have directed the respondent to subject himself for medical examination by a Medical Board or should have directed him to produce a disability certificate. So that part of the order passed by the Deputy Labour Commissioner is illegal. Accident occurred on 28.9.1994, prior to the amendment of provisions of the Workmen's Compensation Act. In **United India Insurance Co. Ltd. v. Alavi (1998 (1) KLT 951)** another Full Bench of this Court has held that for an accident occurred prior to the amendment of the Workmen's Compensation Act the claimant

can claim compensation only in accordance with the provisions of the repealed Act. In this case it was granted as per the amended Act which was also clearly illegal. Though service of notice on the respondent had to be effected by substituted service, he did not appear before this Court. In C.M.P.No.4969/1996 this Court directed the appellant to deposit an amount of Rs.20,000/-. It is pointed out by the counsel for the appellant that if the amount is calculated as per the provisions of the repealed Act it will be less than Rs.20,000/-. This Court had allowed the respondent workman to withdraw the amount deposited. So it will not be possible to recover that amount. Though the respondent is not entitled to get any amount as compensation, in view of the facts and circumstances of the case, I fix the compensation due to the respondent workman at Rs.20,000/-. The appeal is disposed of in the above terms.

C.M.P.No.4969/1996 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.ANo.1409 of 1996

JUDGMENT

11th October, 2007.